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STATE CAPITOL  
PHOENIX, ARIZONA

June 24, 1970

DEPARTMENT OF LAW OPINION NO. 70-19 (R-88)

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REQUESTED BY: THE HONORABLE JACK WILLIAMS  
Governor of Arizona

- QUESTIONS:
1. May an out of state "post of duty" be designated for Concentrated Employment Program employees?
  2. If the answer to Question 1 is yes, are such employees entitled to out of state travel and subsistence pay?
  3. If the answer to Question 1 is yes, are other state employees who pay official visits to such employees with the out of state "post of duty" entitled to out of state travel and subsistence pay?

- ANSWERS:
1. Yes.
  2. No.
  3. Yes.

Question 1. It is our understanding that the Employment Security Commission of Arizona and a related New Mexico agency have been concurrently conducting a Concentrated Employment Program for the vocational training of Indians on the Navajo Reservation, which is located within the boundaries of both states. Because of various health, sanitation and other reasons, the Navajo Concentrated Employment Program has been combined with both Arizona and New Mexico conducting the operations in Gallup, New Mexico. Because of the lack of lodging facilities on the Reservation, it has been necessary for Arizona employees to obtain lodging in Gallup, New Mexico, in order to properly administer the Concentrated Employment Program.

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The court in Kirby v. Arizona, 62 Ariz. 294, 157 P.2d 698 (1945), at pages 303 and 304, stated:

"This court has held that a charge for expenses by a public officer for services without the state, where the law does not authorize the performance of such service beyond the state's boundaries, to be illegal and unlawful. [Citations omitted.] We adhere to that rule which is fully applicable to the California travel expense item here. This charge, as well as the other items which, as has been shown, were not authorized by the terms of the law are invalid, unlawful and recoverable [sic]. It has been repeatedly held by this court that an expenditure by a public officer is invalid unless it is authorized by law and is for a public purpose. . . ."

It is, therefore, necessary to determine whether the Concentrated Employment Program employees' duties are authorized by law to be performed out of the State of Arizona and, if so, whether they are for a public purpose.

A.R.S. § 23-642 provides in part:

"A. The commission shall administer this chapter and may adopt, amend or rescind rules and regulations, employ persons, make expenditures, require reports, make investigations and take such other action as it deems necessary or suitable to that end." (Emphasis added.)

A.R.S. § 23-644 provides in part:

"C. Since the administration of this chapter and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate

federal agencies in exchanging services, and making available facilities and information, the commission may make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided in this chapter with respect to the administration of this chapter as it deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law, and in like manner, may accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law." (Emphasis added.)

A.R.S. § 23-645 provides:

"The commission, with the advice and aid of its advisory councils and through its appropriate divisions, shall:

"1. Take all appropriate steps to reduce and prevent unemployment.

"2. Encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance.

"3. Investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in times of business depression and unemployment.

"4. Promote the reemployment of unemployed workers throughout the state in every other way that may be feasible.

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"5. Carry on and publish the results of investigations and research studies for the purposes of this chapter." (Emphasis added.)

As can be seen from a reading of the above quoted portions of our statutes, the Employment Security Commission is given the general duty of administering Chapter 4 of Title 23, and is given the specific duties of taking all appropriate steps: to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; and to promote the reemployment of unemployed workers throughout the state in every way that may be feasible. The Employment Security Commission, in order to accomplish these ends, is granted the broad power to take any action it deems necessary or suitable.

Our Legislature, in A.R.S. § 23-645, subparagraph C, specifically authorized the cooperation between Arizona and her sister states with regard to unemployment compensation and public employment service, and further authorized the Employment Security Council not only to make available services, facilities and information to sister states, but also to accept and utilize such services, information and facilities made available to Arizona by her sister states.

It is, therefore, our opinion that the Arizona Legislature has granted the Employment Security Commission the authority and power to take any reasonable action it may deem necessary or suitable to accomplish the purposes and ends set forth in Chapter 4 of Title 23, and that if, in the judgment of the Employment Security Council, unemployment throughout the State of Arizona will be reduced by the vocational training and guidance of Indians on the Navajo Reservation, then said Council may cooperate with the State of New Mexico and may utilize all services, information and facilities provided by New Mexico and, further, may provide services, information and facilities to New Mexico.

A.R.S. § 23-601 declares the public policy of Arizona, and states as follows:

"As a guide to the interpretation and application of this chapter, the public policy of this state is declared to be as follows:

"Economic insecurity due to unemployment is a serious menace to the health, morals and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own."

It is, therefore, our opinion that the reduction of unemployment is a public purpose, and that the Governor may authorize the performance of services by Concentrated Employment Program employees without the State of Arizona and may, based upon the opinion of the Employment Security Commission that these services are necessary for the administration of Chapter 4, Title 23, authorize an out of state "post of duty" for said employees.

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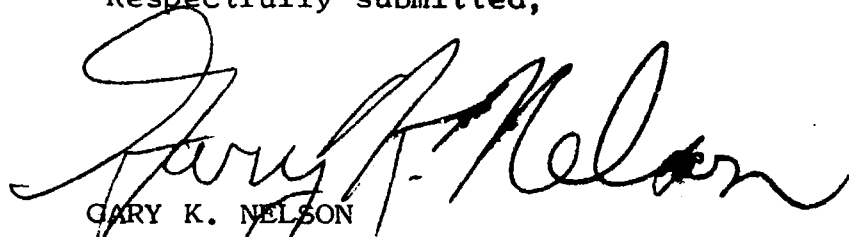
Question 2. Because the Gallup, New Mexico, station will be designated the employees' "post of duty", the provisions of Article 2 of Chapter 4 of Title 38 do not apply to said employees until they travel away from their designated "post of duty", i.e., Gallup, New Mexico. See A.R.S. § 38-621, which states in part:

"A. The provisions of this article shall apply to every public officer, deputy or employee of the state, or of any department, institution or agency thereof, and to a member of any board, commission or other agency of the state when traveling on necessary public business away from his designated post of duty and when issued a proper travel order."

Thus, under the maxim expressio unius est exclusio alterius, it is our opinion that Article 2 of Chapter 4 of Title 38 does not apply until the employee travels on necessary public business away from his designated post of duty.

Question 3. Although employees stationed in Gallup, New Mexico, are at their designated post of duty, other employees traveling from Arizona to that post of duty are entitled, under A.R.S. § 38-624.B, to claim out of state subsistence, because they are actually traveling without the State of Arizona. The designation of "post of duty" for employees stationed in Gallup, New Mexico, in no way affects the status or travel of other employees not so stationed, and thus they are entitled to their statutory subsistence.

Respectfully submitted,



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The Attorney General